IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PIL NO. 86 OF 2003

Free Legal Aid Cell (NGO)]
G-20, Anupam Plaza Building,]
Opposite Azad Apartments,]
Hauz Khas, New Delhi 110 016]
At present Flat No. 10,]
Krishna Kunj Aptt.,]
Near Pool Gate, Pune,]
through its Founder:]
Sugan Chand Aggarwal @ Bhagatji] .....Petitioner

Versus

1. Govt. of Maharashtra, Mumbai,]
   through its Chief Secretary]

2. The Secretary,]
   Ministry of Health & Family Welfare,]
   Govt. of Maharashtra, Mumbai]

3. The Commissioner,]
   Maharashtra Police, District Pune,]
   Pune (Maharashtra)] ...Respondents

Sugan Chand Aggarwal @ Bhagatji, Founder of the Petitioner, present

Mr. V.A. Thorat, Advocate-General, with Mr. V.P. Malvankar, Assistant Government Pleader, for the respondents

Mr. K.G. Munshi instructed by M/s. Shaunak Satpute & Co. for All India Helmet Manufacturers Association.

CORAM: **DALVEER BHANDARI, C.J., &**
S.A. BOBDE, J.
DATE: MARCH 3, 2005.

ORAL JUDGMENT (Per Dalveer Bhandari, C.J.):-

1. The present petition has been filed in the larger public interest by a firm of legal-minded retired persons, who have been involved in giving free legal aid and advice to the most tortured and affected persons in the society, so that fatal and very serious road accidents can be avoided to a large extent.

2. In the petition, the petitioner has given details of number of the serious / fatal road accidents, which had taken place during the years 1999-2002. The particulars of the said information are as under:-

Year	No. of accidents	Death cases.	Injured
1999	4548	1546	2134
2000	5619	2023	3086
2001	6497	2581	3439
2002	6510	2649	3641

3. According to the petitioner, the majority of the fatal accidents can be avoided in case the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”) and Rules framed thereunder are strictly followed.

4. Pursuant to the show cause notice issued by this Court, reply-affidavit has been filed by the Deputy Secretary to Government, Home Department, Mantralaya. It is stated in the said reply that the Act has been passed by the Central Government with effect from 1st July, 1989. It has been implemented by the State of Maharashtra and as per the provisions of Section 129 of the Act, every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall while in a public place, wear protective headgear conforming to the standards of the Bureau of Indian Standards. Section 129 of the said Act reads as under:-

> “**Wearing of protective headgear.-**
>
> Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall while in a public place, wear protective headgear conforming to the standards of Bureau of Indian Standards:
>
> Provided that the provisions of this section shall not apply to a

person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban.

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

Explanation.- "Protective headgear" means a helmet which,-

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the event of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

5. According to the petitioner, in case of road accidents, the death of drivers of two wheeled motor cycle and of pillion-rider happens in majority of the cases because they do not wear helmet in spite of mandatory provisions of Sections 128 and 129 of the Act. In case the provisions of Section 129 of the

Act are strictly implemented, the majority of the fatal accidents can be avoided. The object and reasons for incorporating Section 129 of the Act were for safety and welfare of the drivers and pillion-riders of two wheeler vehicles.

6. We are in complete agreement with the petitioner that Section 129 of the Act has been enacted primarily with a larger public interest and the respondents are duty bound to implement these provisions strictly. Strict implementation of the provisions has met some resistance in various States in the initial few days. Thereafter drivers and pillion- riders of two wheeled vehicles are using helmets in various other parts of the country and statistics have demonstrated that in road accidents, though injuries may be sustained on other parts of the body, but life is saved when driver and pillion riders of the two wheeled vehicle wear helmets.

7. A similar matter came up for consideration before the Karnataka High Court in the matter of *S.R. Bhatt v. State of Karnataka & Ors.* (AIR 1998 Kant 153). In paragraph 16 of the judgment, it is mentioned that 20% of all road accidents involving two wheelers result in head injuries and that the mortality among two wheeler riders not wearing helmets was 250% higher than those who are protected by helmets. The statistics complied by the

International Automobile Association indicate that as far as two wheeler riders are concerned, irrespective of the speed at which the vehicle is moving or the manner in which the vehicle is being driven, when an accident involving a two wheeler takes place, the incidence of a head injury to the rider is as high as 95 per cent. The research also demonstrated that having regard to the angle, direction and line of movement, even in those few cases where the rider is able to escape from a head injury, the chances of a head injury occurring to the pillion-rider are 100 per cent. It is for this reason that irrespective of the advancement of various safety norms up to now, no better substitute has been found for protecting the most vital part of the human body, namely, the head, in the case of a two wheeler accident, which is why the helmet rule is universally enforced in every country of the world.

8. A similar question was examined in considerable detail by a Division Bench of this Court in *Ravi Shekhar Bhardwaj & Ors.* v. *Director General of Police & Ors.*, reported in 2004 (2) Mh. L.J. 213. In this case, it is mentioned that in the past few years, two-wheelers have emerged as a convenient, dependable and relatively inexpensive mode of conveyance, more because the public transport system is not able to keep pace with demand of growing population and need of society. It was stated that Pune,

which is called the “Oxford of the East”, had attracted a large number of students not only from Maharashtra but from other States as well as from abroad, who use two-wheelers.

9. In the present case also, the learned Advocate-General very fairly mentioned that the State Government is willing to implement the law effectively, but the State would like that it should be implemented in a phased manner in the entire State of Maharashtra because of non-availability of the required number of helmets immediately; and in case the implementation of the provisions of Section 129 of the Act in its entirety, and not in a phased manner, there is likelihood that the citizens may be exploited by manufacturers / suppliers by supplying sub-standard helmets, and they may charge exorbitant price for the helmets. In support of his submission, he has placed reliance on a Supreme Court Judgment in *Pannalal Bansilal Pitti & Ors. v. State of A.P. & Anr.*, (1996) 2 SCC 498. Their Lordships, in this case, observed that in a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process, and the legislature attempts to remedy where the need is felt more acute. It would, therefore, be

inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages.

10. The same observations mentioned in the case of *Pannalal Bansilal* have been reiterated in a subsequent judgment in *Javed & Ors. v. State of Haryana &* Ors., reported in (2003) 8 SCC 369.

11. According to the Petitioners, Pune is having vehicle population of 9 lakhs, out of which 70 per cent are two-wheelers. It was stated: "There has been 500 per cent increase in accident on two-wheelers since 1986 and registration of two-wheelers has increased by 600 per cent since 1991". The Petitioners have also given details of increase in road length and vehicle population as also number of two-wheelers. As per the statistical data, 15 to 18 per cent people were seriously injured out of total injured persons. They have given figures of vehicle registration and accidents and deaths. They are as under:-

(a) Everyday on an average 210 accidents occur.

(b) Everyday 25 people die in road accidents.

(c) Everyday on an average 146 persons are injured in road accidents.

(d) On 1st April, 1999 about 91 lacs valid licences were in force

(e) During 1998-99 (1st April, 1998 to 31st March, 1999) –

One year period, 6,34,000 licences and 11,07,000 learning licences were issued.

(f) Everyday 2500 regular licences and 4300 learning licences are issued.

(g) During the year 1998-99, a total number of 4,94,000 vehicles were registered out of which 59% were two-wheelers.

Details of vehicles in the country during the year 1998, as stated by the Petitioners, are as follows:

Year	Total Vehicles (in lacs)	Two-wheelers
1951	3.00	27,000
1971	18.65	5.76 lacs.
1996	328.00	232.00
1997	381.00	264.00
2001	540.00 (estimated)	

12.According to the Petitioners, on an average, in Maharashtra, 134 road accidents take place every day leading to 81 persons being injured and 15

persons losing their lives. Two-third of the accidents in the State, according to the petitioners, is due to negligent or rash driving and lack of adequately trained drivers. Two-wheeler drivers are more vulnerable to injuries and fatalities compared to four-wheeler drivers. The figures also disclosed that out of 1200 cases of head injuries due to road accidents coming to the Neuro-Surgery Department of the Civil Hospital every year, more than 70 per cent are two-wheeler accidents. The said figure was of accidents recorded only in Ahmedabad (Gujarat). The data analysis of accidents showed that compared to cars, motorcycles are more vulnerable. The number of deaths on motorcycles is about 14 times the number of accidents in cars. The data also revealed that helmets reduced the risk of death in motorcycle crash by 29 per cent and the risk of fatal head injury by 40 per cent. Helmets were proved more effective in preventing head injuries which often require extensive treatment and may result in life-long disability.

13. It is also stated in the said petition that wearing of helmet by motor-cyclists has been made compulsory in many countries. Among them are Australia, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Indonesia, Ireland, Italy, Japan, Luxembourg, Malaysia, Netherlands, New Zealand, Norway, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand and the United Kingdom.

14. In the said petition, the Principal Secretary, Home Department, State of Maharashtra, has filed an affidavit on 5th December, 2001 in which it was mentioned that "the State is not opposed to the suggestions made by the Petitioners in the P.I.L. and the State has gone through the suggestions and after applying its mind have issued notification in this regard applicable to the various districts in the State of Maharashtra". It is also mentioned in paragraph 6 of the affidavit that the State Government is very much aware about the accelerating figure of road accidents and loss of life caused due to such accidents.

15. It may be appropriate to refer to the report of All India Road Safety Programme Implementation Committee set up by the Ministry of Road Transport and Highways, Government of India on Road Safety Programme. The Committee noted that the studies revealed that a two-wheeler rider is five times more likely to be killed in an accident than a car or a bus traveller. The Committee, therefore, made several recommendations. Over and above engineering measures, driving licence system, institution building, traffic education, enforcement, etc., legal amendments were also suggested. One of the recommendations by the Committee reads as under:

> "The use of helmets by all motorcycle riders should be made compulsory throughout the country."

A Committee constituted by the State of Maharashtra to make recommendations for effective implementation of road safety and management submitted its report on 30th April, 2002 (as per the affidavit of State dated 31st July, 2002). The Committee consisted of high-ranking officials of various departments.

16.The Committee observed:-

> "The provision for making use of helmets has been made compulsory taking into consideration the safety of the concerned driver of a two wheeler and pillion rider under the Motor Vehicles Act. Even though the use of helmet cannot prevent an accident from taking place, it can certainly reduce the intensity of the impact to the head in case of one."

17.To accomplish this object, the respondent-State and Helmet manufacturers must start vigorous campaign of educating people. People must be told that complete adherence to the provisions of Section 129 of the Act are for the well being and benefit of them and they must wholeheartedly comply with this provision.

18.It is not in dispute that the law enacted by Parliament requires compulsory wearing of protective headgear by every person driving or

riding a two-wheeler in a public place. Admittedly, the first proviso does not apply as its application is limited to a person who is a Sikh, and that too, if he is wearing a turban. True it is that the language of the second proviso to Section 129 is very wide and enables a State Government to make rules providing for such exception "as it may think fit". In the opinion of the Division Bench, it cannot be urged that such power can be exercised for any and every purpose. It is settled law that whenever power has been conferred on an authority which can be exercised by such authority as it thinks fit or as it deems fit, such power has to be exercised legally, properly and reasonably.

19. It may be pertinent to mention that a Committee Constituted by the State of Maharashtra to make recommendations for effective implementation of road safety and management submitted its report on 3rd April, 2002. The Committee observed that the provision for making use of helmets should be made compulsory, taking into consideration the safety of the concerned driver of a two wheeler and pillion rider under the Act. Even though the use of helmet cannot prevent an accident from taking place, it can certainly reduce the intensity of the impact to the head in case of one. It was also observed during discussions with manufacturers of helmets that there are no difficulties to manufacture and supply helmets conforming to the

specifications of the Bureau of Indian Standards. Also the cost of the same should be affordable to common people, taking into consideration its necessity from the point of view of safety of the user.

20. As far as the present case is concerned, the learned Advocate-General appearing for the State submits that the State is also keen to implement the law effectively but would like to do it in a phased manner in the entire area of the State of Maharashtra because of non-availability of required number of helmets immediately. In case Government implements the provisions of Section 129 of the Act in its entirety and not in a phased manner, there is likelihood that the citizens will be exploited by manufacturers / suppliers by supplying sub-standard helmets and also by selling helmet at an exorbitant rate.

21. It may be pertinent to mention that in an intervention application filed in the present matter, the intervener sought directions to the Respondents to establish a body which will monitor and regulate sale of helmets in City, prohibit any sort of malpractice and black-marketing in the sale of helmets. He has also sought a direction to the respondents to declare a list of authorized helmet manufacturers and also the companies who got ISI mark for their helmets.

22. The intervenor also mentioned about the poor condition of road and direction be given to improve the condition of road. As far as improving the conditions of roads is concerned, undoubtedly, it is also an important obligation of the State that the State must improve the conditions of roads all over the State of Maharashtra. Implementation of law can be suspended till all roads in Maharashtra are constructed according to the satisfaction of the intervenor. According to another point of view, the requirement of use of helmet is greater where roads are not in very good condition.

23. A similar matter came up for consideration before the Delhi High Court in the matter of *Pt. Parmanand Katara vs. Union of India and Anr.* (AIR 1998 Delhi 200) in which a human rights activist and practicing lawyer of that Court filed the petition in the larger public interest. The Deputy Commissioner of Police (Traffic) filed a counter-affidavit in which it was clearly admitted that there was no doubt that the death rate was piling up because of the non-implementation of the provisions of the Act. The predominant purpose behind incorporating these provisions was to avoid fatal and serious accidents. The Court observed in the said judgment that this fact was abundantly proved even from the counter-affidavit filed by

the Deputy Commissioner of Police in which it is mentioned that a large number of fatal and other accidents can be avoided by the strict compliance of the provisions of Sections 128 and 129 of the Act. Before the Delhi High Court also the same argument that the provisions of the Act cannot be implemented immediately because of non-availability of helmets of different sizes arose but after the order was passed and it was properly implemented, availability of helmets never remained a problem. In a free economy, market forces always take care of the problem of demand and supply.

24. In *Namit Kumar vs. U.T. Chandigarh and Ors.* (C.W.P. No. 7639 of 1995), a Division Bench of the Punjab and Haryana High Court directed the State to implement the provisions of Section 129 of the Act immediately and give due publicity and circulate the judgment to all the concerned officers. The Court observed that strict action should be taken against the erring persons in accordance with the directions contained in the judgment.

25. The provisions of the Act are intended for the prevention of fatal and serious accidents and the State must ensure that the provisions of the said Act are strictly adhered to. People must be made aware of the benefit of using helmet during the period in which the scheme is being implemented in a phased manner. People must be informed that this piece of legislation is

designed entirely for their own safety and well-being. It is settled principle of interpretation of the statute that the framers of the Act are presumed to have taken into consideration all the relevant aspects at the time of framing of the statute. Once the Act has come into force, it is the bounden duty and obligation of all concerned to strictly comply with the provisions of the Act.

26. Vigorous publicity must be given to educate people and provide information to them that adherence of the provision is in their own interest and in case they do not adhere to the same, they will have to face the consequences. These provisions have been incorporated for the benefit, welfare and the safe journey of the driver and pillion-rider of a two-wheeler vehicle. In our considered view, wearing helmet helps the driver of a two-wheeler vehicle to drive the vehicle in exercise of his freedom of movement without being subjected to a constant apprehension of a fatal head injury, if any accident takes place. We direct the State and the Helmet Manufacturers Association to inform that they must wholeheartedly support this piece of legislation.

27. The learned Advocate-General has drawn our attention to a letter dated 3rd March, 2005, which has been sent to him by the Transport

Commissioner, Government of Maharashtra, in which it is mentioned that in view of the non-availability of helmets, this law would be made applicable in the State of Maharashtra in a phased manner. It is mentioned in the letter that in the first phase, the provisions of Section 129 of the Act shall be vigorously implemented in Mumbai and Thane Districts from 1st April, 2005.

28.It is also mentioned that in the second phase, the provisions of the Act would be strictly implemented in the Districts of Raigad, Sindhudurg, Ratnagiri, Ahmednagar, Jalna, Parbhani, Hingoli, Beed, Akola, Washim, Osmanabad, Buldhana, Gadchiroli, Sangli, Satara, Jalgaon, Latur, Nanded, Yavatmal, Wardha, Chandrapur, Gondia, Bhandara and Nasik from 1st May, 2005. The Act shall be implemented strictly in the third phase from 1st June, 2005 in the Districts of Kolhapur, Solapur, Aurangabad, Amaravati and Nagpur.

29.The provisions of the Act shall be strictly implemented in the entire State of Maharashtra from 1st July, 2005. The learned Advocate-General, appearing for the State, assures that to educate the public,

the gist of the order shall be telecast in Door Darshan and other channels of the television. It would be repeatedly announced on radio and advertisement be given in leading newspapers on a continuous basis. The learned Advocate-General also mentioned that it would be the endeavour of the State to inform the public about the benefit of using helmets. The Helmet Manufacturers' Association also undertakes to make similar advertisements, at their costs, in Door Darshan, other channels of television, radio and newspapers.

30. It has become necessary to carry out this exercise, because we do not want that the provisions of the Act are not strictly complied with despite the Court's order, as happened after the first judgment of the Division Bench dated 16th July, 2003. Initially, we were not in favour of implementing the provisions of the Act in a phased manner, but in deference to the Supreme Court judgment, we have passed this judgment. These provisions have been incorporated for the welfare and benefit of the public at large. Therefore, it is all the more essential that these provisions have to be strictly implemented in the larger interest of public.

31. The State also undertakes to paste notices at the prominent places in the city that it is compulsory to wear helmets and non-compliance of the Act would result in imposition of fine and prosecution. The learned Advocate-General also assured the Court that in consonance with the judgment of this Court, a Notification under Rule 250 of the Maharashtra Motor Vehicles Rules, shall be issued by the State as early as possible, and in any event, within one week from today.

32. We direct the Registry to send a copy each of this judgment to the Secretary, Ministry of Health & Family Welfare, Government of Maharashtra, the Director-General of Police, Maharashtra, and the Commissioner of Police, Mumbai, with the direction to circulate copies of the judgment to all concerned at all levels in the State.

33. No further directions are required. This petition is accordingly disposed of.

34. We would like this matter to be listed on 15th April, 2005 only to

ensure compliance of our judgment.

CHIEF JUSTICE

S.A. BOBDE, J.